

HOUSE BILL REPORT

EHB 1506

As Passed House:
May 25, 2017

Title: An act relating to workplace practices to achieve gender pay equity.

Brief Description: Addressing workplace practices to achieve gender pay equity.

Sponsors: Representatives Senn, Pellicciotti, Slatter, Macri, Peterson, Chapman, Ortiz-Self, Bergquist, Sawyer, Frame, Gregerson, Farrell, Kilduff, Kagi, Dolan, Clibborn, Pollet, McBride, Stanford, Doglio, Appleton, Robinson, Fitzgibbon, Sells, Goodman, Tharinger, Hudgins, Ormsby, Riccelli, Fey and Pettigrew.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/24/17, 1/30/17 [DP];

Appropriations: 2/16/17, 2/24/17 [DPS].

Floor Activity:

Passed House: 3/8/17, 61-36.

First Special Session

Floor Activity:

Passed House: 5/2/17, 61-31.

Second Special Session

Floor Activity:

Passed House: 5/25/17, 61-33.

Brief Summary of Engrossed Bill

- Modifies the Equal Pay Act by defining "similarly employed," modifying defenses, and making other changes.
- Prohibits discrimination in providing employment opportunities based on gender.
- Prohibits retaliation for certain workplace discussions about wages and other matters.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Doglio and Frame.

Minority Report: Do not pass. Signed by 2 members: Representatives Manweller, Ranking Minority Member; McCabe, Assistant Ranking Minority Member.

Minority Report: Without recommendation. Signed by 1 member: Representative Pike.

Staff: Joan Elgee (786-7106).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 21 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Stokesbary, Assistant Ranking Minority Member; Bergquist, Caldier, Cody, Fitzgibbon, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 12 members: Representatives Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Buys, Condotta, Haler, Manweller, Nealey, Schmick, Taylor, Vick, Volz and Wilcox.

Staff: Meghan Morris (786-7119).

Background:

The Industrial Welfare Act contains a number of wage and employment provisions. One provision, the Equal Pay Act (EPA), provides that an employer who discriminates in the payment of wages as between sexes or who pays any female a less wage than males similarly employed is guilty of a misdemeanor. The EPA further provides that if a female receives less compensation because of sex discrimination, she may sue and recover the difference in compensation she should have received. It is a defense that the difference in wages is based in good faith on a factor or factors other than sex.

The Washington Law Against Discrimination, administered by the Human Rights Commission (Commission), also makes it an unfair employment practice to discriminate in compensation because of sex. Discrimination in promotions or other terms and conditions is also prohibited. Under a work-sharing agreement with the Equal Employment Opportunity Commission (EEOC), complaints alleging a violation of the EPA filed with the Commission are investigated by the EEOC.

The National Labor Relations Act protects the right of some employees to discuss the terms and conditions of employment. Employees who believe their rights have been violated may file a complaint with the National Labor Relations Board (NLRB).

Washington is a "state plan" state for purpose of the federal Occupational Safety and Health Administration. As a state plan state, Washington assumes responsibility for occupational safety and health under the Washington Industrial Safety and Health Act (WISHA). The

Department of Labor of Industries (Department) adopts rules and otherwise administers the WISHA.

Summary of Engrossed Bill:

Equal Pay Act.

The EPA is modified in several respects. Employees are "similarly employed" if the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative.

The employer defense is changed to provide that a differential based on the following is not discrimination:

- a seniority system;
- a merit system;
- a system that measures earnings by quantity or quality of production;
- a bona fide job-related factor, including but not limited to education, training, or experience, that is: (1) consistent with business necessity; (2) not based on or derived from a gender-based differential; and (3) accounts for the entire differential; or
- a bona fide regional difference in compensation levels that is: (1) consistent with business necessity; (2) not based on or derived from a gender-based differential; and (5) accounts for the entire differential.

An employee's previous wage or salary history is not a defense.

References are changed from "sex" to "gender," "wage" is changed to "compensation," and compensation is defined to include benefits. Language referring to "males" and "females" is deleted.

Employment Opportunities.

Discrimination in providing employment opportunities based on gender is prohibited. "Less favorable employment opportunities" means assigning or directing the employee into a less favorable career track, if career tracks are offered, or position; failing to provide information about promotions or advancement in the full range of career tracks offered by the employer; or limiting or depriving an employee of employment opportunities that would otherwise be available but for the employee's gender.

Wage Discussions.

An employer may not engage in the following practices:

- require employee nondisclosure of wages as a condition of employment;
- require an employee to sign a document that prevents the employee from disclosing his or her wages; or
- retaliate against an employee for:
 - inquiring about, disclosing, comparing, or otherwise discussing the employee's wages or the wages of another employee;
 - asking the employer to provide a reason for the employee's wages or a lack of employment opportunities; or

- aiding or encouraging an employee to exercise their rights.

A employer may prohibit an employee who has access to the compensation of others as part of the employee's essential job functions from disclosing wages of others, with some exceptions. The provisions do not allow an employee to violate the WISHA or rules. An employee is not required to disclose the employee's compensation.

Retaliation.

An employer may not discharge or otherwise discriminate against an employee for filing a complaint or taking other specified actions under the EPA, or the employment opportunities or wage discussions provisions.

Enforcement.

An employee may file a complaint with the Department, and the Department must investigate complaints. The Director of the Department (Director) may also initiate an investigation. In addition, a private cause of action is available.

The Director or the court may order actual damages; statutory damages equal to the actual damages or \$5,000, whichever is greater; and interest. Costs and reasonable attorneys' fees are available on appeal from the Director's determination and in a civil action. Any wages and interest owed must be calculated from the first date wages were owed to the employee. The Director may also impose a civil penalty of not more than \$200 for a first violation and \$1,000 for a repeat violation, payment for the cost of the Department's investigation and enforcement, and any other appropriate relief. The court may also order reinstatement and injunctive relief.

Other.

Rule-making by the Department is authorized.

Appropriation: None.

Fiscal Note: Available

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Labor & Workplace Standards):

(In support) The EPA has not been updated since 1943. If changes are not made, it will be 2070 before the gap is closed. Seattle has one of the worst gaps at 73 cents for every dollar and for some women of color it is 46 cents for every dollar. Washington once was a leader but now is fourth from the bottom in updating equal pay. Women who are mothers face increased discrimination. Many women have stories about unequal pay and benefits. Men get further and further ahead because of the discrimination in starting salaries.

Washington women lost \$11 billion to the wage gap last year. The bill will improve existing law and close loopholes. The administrative remedy makes it easier for individuals, especially low-wage workers. The change to the bona fide defense will make sure reasons are job related. Pay secrecy perpetuates discrimination. Transparency gives women the information they need to know if they are being discriminated against. Equal opportunity is not a burden for employers.

(Opposed) The bill is confusing and there are technical concerns. The definitions and legal standards are unclear, as are the remedies. The bill will lead to spurious lawsuits. Performance and location of work should be addressed. Reasonable time, place, and manner limits are needed for wage discussions. It can be very difficult to determine less favorable opportunities with shift work. There is no wage delta for men and women in the technology industry if experience is considered.

(Other) The bill allows dual litigation. The less favorable opportunities piece interferes with business operations.

Staff Summary of Public Testimony (Appropriations):

(In support) Proponents are working with stakeholders and other members to find agreement.

(Opposed) None.

Persons Testifying (Labor & Workplace Standards): (In support) Representative Senn, prime sponsor; Molly Moon Neitzel, Molly Moon Ice Cream; Maggie Humphreys, MomsRising; Janet Chung, Legal Voice; Lisa Calder; Cherie Reeves Sperr, Young Women's Christian Association; and Lynn Dodson, Washington State Labor Council.

(Opposed) Michael Schultzer, Washington Tech Industry Association; and Carolyn Logue, Washington Retail Association.

(Other) Bob Battles, Association of Washington Business.

Persons Testifying (Appropriations): Representative Senn, prime sponsor.

Persons Signed In To Testify But Not Testifying (Labor & Workplace Standards): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.